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No. 82-1779

IN THE

Supreme Court of the United States

October Term, 1982

William Charles Hoffman

vs.

Minnesota Lawyers Professional Responsibility Board

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

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QUESTION PRESENTED

Should the petition for the writ of certiorari be denied because the Court lacks jurisdiction due to mootness and petitioner's lack of standing?

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PARTIES TO THE PROCEEDING

William C. Hoffman is the petitioner in this proceeding. All references to petitioner in this brief refer to petitioner Hoffman. The Lawyers Professional Responsibility Board (Board) is the respondent. The Director of Lawyers Professional Responsibility (Director) is the administrator of the Minnesota disciplinary system and is appearing on behalf of the Board.

For clarity, it should be noted that the title of the parties in the Minnesota disciplinary proceeding differ from the titles of the parties in this proceeding. The parties in the Minnesota disciplinary proceeding were the Director and Hoffman, a Minnesota lawyer (respondent). The Minnesota Civil Liberties Union appeared in an amicus curiae capacity

on behalf of respondent Hoffman. All pleadings set forth in the appendix to the petition for a writ of certiorari refer to the Director and respondent Hoffman.

While not a party, the Minnesota Supreme Court has been provided with three copies of the brief in opposition.

OPINIONS BELOW

The petitioner has included in the appendix to the petition the findings of fact, conclusions of law and recommendation of the referee, as well as the amended order of the Minnesota Supreme Court dismissing the Minnesota disciplinary proceeding against petitioner.

JURISDICTION

This Court lacks subject matter jurisdiction to grant the petition for a writ of certiorari because the Minnesota disciplinary proceeding against petitioner has been dismissed rendering the matter moot for purposes of federal judicial review. Petitioner lacks standing to seek federal judicial review of other Minnesota disciplinary proceedings to which he is not a party.

STATEMENT OF THE CASE

In April, 1980, a complainant filed an ethics complaint against the petitioner. After an investigation, the Director issued a warning pursuant to Rule 8 of the Rules on Lawyers Professional Responsibility (RLPR). The petitioner demanded a hearing on the warning. Charges of unprofessional conduct were presented to a panel of the Lawyers Professional Responsibility Board (panel) on January 16, 1981. Pursuant to Rule 9, RLPR, the panel directed the filing of a petition for public discipline against respondent.

On April 7, 1981, petition for disciplinary action was filed in the Minnesota Supreme Court. The petitioner filed an answer. The matter was heard before a referee, a Minnesota county court judge, on May 11 and 12, 1982. On December 29, 1982, the referee recommended to the Minnesota Supreme Court that discipline was not warranted. The Director concurred with the referee's recommendation and joined in the referee's recommmendation that discipline was not warranted. On February 16, 1983, the Minnesota Supreme Court dismissed the proceeding against petitioner. There has been a full hearing on this matter. All matters have been dismissed. No disciplinary action was taken against petitioner. There is no action pending against petitioner. There is no legal proceeding from which to seek review.

ARGUMENT

The disciplinary proceeding against the petitioner was dismissed. All issues were resolved in favor of petitioner. There is no case or controversy between the parties. The petition for writ of certiorari should be denied because the Court lacks jurisdiction due to mootness and lack of standing by petitioner.

A. Mootness

Article III of the Constitution limits the judicial power of the United States to the resolution of cases and controversies. This fundamental constitutional principle has been upheld in numerous decisions, most recently in *Valley Forge College v. Americans United,* 454 U.S. 464 (1982). The district court had dismissed the suit because the p'ain-

tiff lacked standing. The Court of Appeals, Third Circuit, reversed the dismissal. The Supreme Court reversed the Third Circuit holding the federal courts lacked jurisdiction because there was no case or controversy. Justice Renquist, writing for the majority, set forth in detail the constitutional basis of the case or controversy jurisdictional requirement:

> Article III of the Constitution limits the "judicial power" of the United States to the resolution of "cases" and "controversies." The constitutional power of the federal courts cannot be defined, and indeed has no substance, without reference to the necessity "to adjudge the legal rights of litigants in actual controversies." (citation omitted). The requirements of Art. III are not satisfied merely because a party requests a court of the United States to declare its legal rights, and has couched that request for forms of relief historically associated with courts of law in terms that have a familiar ring to those trained in the legal process. The judicial power of the United States defined by Art. III is not an unconditioned authority to determine the constitutionality of legislative or executive acts. The power to declare the rights of individuals and to measure the authority of governments, . . . "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy."

Valley Forge, at 471 (citing *Liverpool Steamship Co. v. Commissioners of Emigration,* 113 U.S. 33, 39 (1885) and *Chicago and Grand Trunk R.R. Co. v. Wellman,* 143 U.S. 339, 345 (1892)).

The Court, in defining case and controversy, has adopted a self-imposed jurisdictional limit. The Court has estab-

lished that it has no power to decide moot cases. Mootness, once proved, will prevent the decision of the case on the merits. *U.S. v. Felin & Co.*, 334 U.S. 624, 640 (1948). *See also*, Note, *Cases Moot on Appeal: A Limit on the Judicial Power*, 103 U. Pa. L. Rev. 772 (1955).

Mootness results when an event occurs which renders it impossible for the Supreme Court, if it should decide to grant the case in favor of the plaintiff, to grant him any effectual relief whatsoever. *Mills v. Green*, 159 U.S. 651 (1895). A case is moot when a party has no legal interest in the outcome. To constitute a case in controversy there must be adverse parties with real interests whose contentions are submitted to the Court for adjudication. *Weinstein v. Bradford*, 423 U.S. 147 (1975). *Midland-Guardian of Pensacola, Inc. v. Carr*, 425 F.2d 793 (5th Cir. 1970). The dismissal of the disciplinary action against the petitioner rendered his case moot.

B. Lack of Standing

Petitioner lacks standing to seek the requested relief. The relief petitioner seeks is not the resolution of an actual case or controversy. Rather he seeks an advisory opinion regarding the nature of the Minnesota disciplinary proceedings. Petitioner does not assert that in his disciplinary proceeding the Minnesota Supreme Court rendered a decision in conflict with federal law. Nor does he claim a distinct injury that is likely to be redressed if the requested relief is granted. *Valley Forge*, at 472. Rather he claims the Minnesota Supreme Court, in Minnesota disciplinary proceedings to which petitioner was not a party has erroneously interpreted federal law. Respondent asks the Court to review

these decisions as well as several of the Rules on Lawyers Professional Responsibility[1] adopted by the Minnesota Supreme Court to determine if any of these violate federal law. Such abstract questions of judicial interpretation are clearly beyond the scope of federal judicial power.

> In addition, even when the plaintiff has alleged redressable injuries sufficient to meet the requirements of Art. III, the Court has refrained from adjudicating "abstract questions of wide public significance" which amount to "generalized grievances," pervasively shared and most appropriately addressed in the representative branches.

Id. at 474-475 (citing *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975)).

This recent opinion affirms the Court's recognition that it cannot resolve the merits of the lawsuit until it first determines it has jurisdiction to review the matter.

> Article III obligates a federal court to act only when it is assured of the power to do so, that is, when it is called upon to resolve an actual case or controversy. Then, and only then, may it turn its attention to other constitutional provisions and presume to provide a forum for the adjudication of rights.

Id. at 476 n. 13 (citing *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 345 (1936) (Brandeis, J., concurring)).

The Court recognizes that its power of review is not unlimited.

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[1]During the pendency of the Minnesota disciplinary proceeding, the Minnesota Rules on Lawyers Professional Responsibility were significantly amended. Petitioner seeks review of Rules, such as Rules 8, 9 and 25, which have been repealed, substantially amended, or adopted since initiation of disciplinary proceedings against petitioner.

> Article III, which is every bit as important in its circumscription of the judicial power of the United States as in its granting of that power, is not merely a troublesome hurdle to overcome if possible so as to reach the "merits" of a lawsuit which a party desires to have adjudicated; it is a part of the basic charter promulgated by the Framers of the Constitution at Philadelphia in 1787....

Id. at 476.

CONCLUSION

The Minnesota disciplinary action was dismissed. The matter is moot. No case or controversy exists between the parties. Therefore, the Court lacks jurisdiction to grant the relief sought. Respondent asks that the Court deny petitioner's petition for a writ of ceriorari.

Respectfully submitted,

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